

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

IN THE MATTER OF:

**RICHARD WARREN TINNELL &
SHANNON MARIE TINNELL,**

Debtors.

**STATE OF NEBRASKA,
DEPARTMENT OF HEALTH AND
HUMAN SERVICES,**

Creditor-Appellant,

VS.

**RICHARD WARREN TINNELL &
SHANNON MARIE TINNELL,**

Debtors-Appellee.

CASE NO. 8:09CV238

Bankruptcy No. 09-80160

Chapter 13

ORDER

This matter is before the Court on the Appellees' Application for Attorney Fees & Expenses (Filing No. 16). Appellees ask the Court to award Appellees reasonable attorney fees and other expenses incurred in connection with the Court's order and judgment affirming the order of the United States Bankruptcy Court for the District of Nebraska (Filing Nos. 14, 15). The Court concludes that Appellees' application should be denied.

DISCUSSION

Appellees ask the Court to award reasonable attorney fees and other expenses under Federal Rule of Bankruptcy Procedure 2016 and Federal Rule of Civil Procedure 54(d)(2). Neither of those rules states a basis for this Court to grant Appellees' request.

First, Rule 54(d)(2) does not provide the basis for recovering attorney fees and costs. It merely states the procedure by which a party may request attorney fees. Therefore, Rule 54(d)(2) does not state a basis for relief.

Second, applications under Federal Rule of Bankruptcy Procedure 2016 are applications for compensation from the bankruptcy estate. It is the duty of the United States Trustee, not the district court sitting in an appellate capacity, to review applications for compensation. See 11 U.S.C. § 586(a)(3)(A)(i). Only after notice to the parties and the United States Trustee will the bankruptcy court determine the amount to be awarded. 11 U.S.C. § 330(a)(1); see also 9 *Collier on Bankruptcy*, ¶¶ 2016.08-2016.09[1], pp. 2016-9 - 2016-10 (15th ed. 2009). The record does not indicate this process has been followed. Therefore, this Court cannot grant an award of attorney fees and costs under Rule 2016.

Accordingly,

IT IS ORDERED: Appellees' Application for Attorney Fees & Expenses (Filing No. 16) is denied, without prejudice to reassertion in the appropriate forum.

DATED this 12th day of January, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Court